IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7415 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PATEL DHUDHABHAI LILABHAI

Versus

DEPUTY COLLECTOR

Appearance:

MS KUSUM M SHAH for Petitioners

MS. ACHARYA, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 25/08/2000

ORAL JUDGEMENT

1. The petitioners have challenged the order dated 26.5.1988 passed by the Deputy Collector wherein he has been pleased to hold that the petitioners are carrying on agricultural operations at Vashi and Naderdi and their names appear in the record of rights in the year 1981-82,

1983-84 and thereby cancelled the grant dated 6.12.1974 and ordered the land to be forfeited without any payment of compensation and also the order of the Collector, Banaskantha, dated 21.8.1990 which has confirmed the aforesaid order. The petitioners have also challenged the order of the Deputy Secretary, Revenue Department (Appeals), State of Gujarat, Ahmedabad, wherein also the Secretary was pleased to reject the revision application and confirm the said order.

2. The facts giving rise to this petition are as under:-

2.1 Petitioner Nos. 1 to 4 owned agricultural lands at Marvada which they cultivated personally. In the year 1969-70 the agricultural land of the petitioners at Marvada which they were cultivating personally submerged in Sabarmati Dharoi project. It was stated that under the Government Public Works Department Resolution dated 17.7.1971 all persons including the petitioners whose lands were submerged due the Dharoi Project, were to be granted land as a rehabilitation measure. Due to non-availability of land immediate steps could not be taken for grant of land to affected persons.

2.2 The petitioners left with no land at Marvada and having no other means of livelihood to maintain their families. Therefore, petitioner Nos. 2, 5 and 4 jointly with one Patel Kodarbhai Hemabhai purchased by a registered document dated 10.4.1973 right of one Gandhi Manubhai Ramabhai in agricultural land situated at Naredi, Taluka Kheralu, Dist. Mehsana as their relatives and caste people had settled at Naredi and round about areas in taluka Kheralu, Dist. Mehsana. However, regarding this land Civil litigation ensued in the form of Special Civil Suit No. 64 of 1978 in the Court of Civil Judge (S.D.), Mehsana and purpose of their having land for cultivation did not materialise.

2.3 It appears that on 11.7.1984 a compromise entered into by which the petitioners obtain those lands. The entry regarding the said land has been produced by the petitioner at page 31 of the petition.

2.4 In the petition it was stated that though they purchased the land in April, 1973, as they could not get clear title the petitioners were awaiting for some land from the Government. It appears that the Government by order dated 6.12.1974 granted survey No. 146 of Vashi to petitioner Nos. 1 to 4 with others for cultivation at Vashi, Tal. Danta, Dist. Banaskantha on payment of Rs.

360/- per acre as shown hereunder:-

S.No.	Name	Petitioner No.	A.G.	Out of No.
2.	Patel Kachra Bhikha	3	4.00	146 of Vashi
16.	Patel Dhudabhai Lilabhai	1	4.00	"
22	Patel Rama Raichand	4	4.33	"
32	Patel Shankerbhai Dhudabhai	2	2.35	"

2.5 It was also stated that some conditions were imposed that the lands should not be sold or should not be given lease, or should not be parted with in any other manner or should not be encumbered in any other way.

2.6 It was further stated that petitioner Nos. 1 to 4 have obtained lands on new and impartible tenure with a condition to cultivate lands personally and not to mortgage, sell, gift or transfer without prior permission of the State Government. An agreement in Form No. I-1 under Rule 37(4) of the Gujarat Land Revenue Rules, 1972, was taken from each of the petitioner Nos. 1 to 4.

2.7 In the petition it was stated that for day-to-day management each of the petitioners executed power of attorney in favour of petitioner No. 5 on 16.10.1976 i.e. Patel Dahyabhai Dhudabhai who is son of petitioner No. 1. It was also stated that petitioner No. 5 is brother of petitioner No. 2 and son of petitioner No. 1 who is aged about 70 years. There is a joint family and petitioner No. 5 is member of the joint family of petitioner No. 1. Petitioner No. 3 is aged about 60 years and is cousin brother of petitioner No. 5. Petitioner No. 4 is aged 65 years and is uncle of petitioner No. 5.

2.8 The Deputy Collector, Palanpur, respondent No. 1 herein has issued a show cause notice dated 5.10.1984 calling upon the petitioners to show cause as to why the lands granted to them be forfeited to the State Government for breach of conditions of the grant inasmuch as though land was of new tenure, power of attorney is given in favour of respondent No. 5 for management. The petitioners filed written reply and stated that petitioners stay at Vashi and are cultivating personally land granted to them. It was stated that petitioner No. 1 is father and petitioner No. 2 is elder brother of petitioner No. 5 and he is member of their family. It was stated that due to lack of education, petitioners were not able to handle money matters and keep accounts of yield and sales, so power of attorney for management

was given to petitioner No. 5 who is member of the family and is well educated to handle all aspects connected with cultivation.

2.9 The Deputy Collector, Palanpur, visited the site, recorded the statements of cultivators of neighbouring fields and of Talati. He perused the record including V.F. 7-12 and came to the conclusion that grantees stayed at Vashi and cultivated lands personally granted to them. It was observed that due to old age, illness etc. the petitioners have given power of attorney only for management to petitioner No. 5 and there is neither transfer of possession of land nor there is sale, mortgage or gift of land. The Deputy Collector, by his order dated 2.2.1985, discharged notice. The said order of the Deputy Collector has been produced by the petitioner at Annexure-E to the petition.

2.10 In the meanwhile, Special Civil Suit No. 64 of 1976 regarding land purchased by petitioner Nos. 2, 5 and 4 at Naredi, Tal. Kheralu, Dist. Mehsana, came to be compromised and consent decree was passed by the learned Civil Judge (S.D.), Mehsana, on 28.8.1983 and the purchasers were put in possession of the said land by Court Commissioner on 12.2.1984. An entry to that effect is posed in Huk Patrak V.F. No. 6 on 11.7.1984 and that entry has been produced by the petitioners on page 31 of the petition.

2.11 Thus, it was stated that till 18.2.1984, none of the petitioners had actual possession of agricultural land at Naredi and were not cultivating any land except land at Vashi. It was stated that the petitioners were staying at Vashi and were cultivating personally the suit lands as per the statements of neighbours and Talati as recorded by the Deputy Collector and V.F. 7-12 right from 1975-76.

2.12 It was further stated that the petitioners presented an application before the Deputy Collector on 13.4.1983 expressing their desire to sell the land granted to them at Vashi as Vashi is out of way from Naredi and they are separated from their families. They requested to convert the land at Vashi into transferable old tenure lands.

3. Ms. K.M. Shah, learned advocate for the petitioners stated that without giving any opportunity of hearing the Deputy Collector by order dated 26.5.1988 was pleased to hold that petitioners are carrying agricultural operations at Vashi and Naredi and their

names appear for the years 1981-82 and 1983-84 in phanipatrak. It was held that it is not believable that same person cultivated lands at both places and misinterpreting power of attorney granted for management to petitioner No. 5 and has held that grantees-petitioners Nos. 1 to 4 are not cultivating personally lands granted to them and therefore by order dated 26.5.1988 he cancelled grant dated 6.12.1974 and ordered the lands to be forfeited to the State without any payment of compensation. The said order has been produced at Annexure-G to the petition.

4. Being aggrieved and dissatisfied with the aforesaid order, the petitioners filed appeal before the Collector, Banaskantha who was pleased to dismiss the appeal by his order dated 21.8.1990 and thereby confirmed the order of the Deputy Collector on 26.5.1988.

5. Being aggrieved and dissatisfied with the order of the Collector, Banaskantha, dated 21.8.1990, the petitioners preferred revision before the Deputy Secretary, Revenue Department (Appeals), State of Gujarat, Ahmedabad, who by his order dated 10.5.1991 was pleased to reject the revision application filed by the petitioners and thereby confirmed the order of the Deputy Collector 26.5.1988 as well as the order of the Collector dated 21.8.1990.

6. Being aggrieved and dissatisfied with the orders of the aforesaid authorities, the petitioners have preferred this present petition before this court on the following grounds:

> "The learned counsel for the petitioners submitted that the authorities have patently erred in law in holding that the petitioners were not personally cultivating lands at Vashi considering that petitioner No. 5 who was granted power of attorney was member of joint family of petitioner No. 1 being his son and younger brother of petitioner No. 2 and nephew of petitioner No. 4 and cousin brother of petitioner No. 3."

7. It was submitted that the Deputy Collector has committed error apparent on the face of the record in holding that power of attorney was executed in favour of petitioner No. 5 as grantees were staying outside Vashi where lands were granted though power of attorney did not state so.

8. It was further stated that the order of authorities are contrary to evidence on record considering that the Deputy Collector in earlier proceedings after visiting the site, recording statements of cultivators of adjoining fields and perusing of record including V.F. 7-12 and others by order dated 2.2.1985 held that grantees were staying at Vashi and were cultivating lands granted to them at Vashi and power of attorney granted to the petitioner No. 5 was only for management and no sale, mortgage, gift or transfer of land was made and there was no breach of condition. It was submitted that the present orders of authorities are contrary to and inconsistent with the earlier order of the Deputy Collector dated 2.2.1985 and the authorities have not considered the evidence produced before the Deputy Collector while passing the order dated 2.2.1985. The authorities have ignored the material evidence on record.

9. It was further submitted that merely because the land has been given to a power of attorney holder there is no breach of condition laid down either under entry 283 dated 6.11.1975 or the grant of land dated 17.5.1977 by giving the land to power of attorney holder in this case who is a family member. There is no question of parting of the land to somebody else. It was further submitted that the authorities have not considered the provisions of Bombay Tenancy and Agricultural Lands Act, 1948 particularly Section 2(b) which provides to cultivate personally and Explanation 2 thereto.

10. The learned counsel for the petitioner states that the authorities are considering section 2(b) of the Bombay Tenancy and Agricultural Lands Act particularly clause (2) that if the land went to a member of the family then it deemed to cultivate personally but in this case the power of attorney holder petitioner No. 5 is also member of the family of petitioner and therefore also the petitioners cultivated land personally in this behalf.

11. It was further submitted that the authorities have lost sight of the fact that petitioner Nos. 1 and 3 were not amongst the purchasers who purchased land at Naredi in the year 1973. The purchasers though had purchased the land at Naredi in 1973 due to litigation were not in possession of lands at Naredi till by Court Commissioner put them in possession on 10.2.1984 and thus none of the grantees of the land at Vashi cultivated land at Naredi. It was further submitted that the Collector has misread application of the petitioners dated

14.4.1983 to hold that the petitioners applied for conversion of land into transferable old tenure land as they were staying outside Vashi and are not able to personally supervise cultivation.

12. It was further submitted that the Collector has misinterpreted the power of attorney granted to respondent No. 5 and held that all powers of cultivation are granted to petitioner No. 5 and committed breach of condition of grant and confirmed order of the Deputy Collector. It was further submitted that the observations of the Collector that the intention of the grantees to make huge profit by sale of land which was granted to the petitioners for personal cultivation are unwarranted considering that the lands at Vashi were granted to the petitioner as their fertile, valuable lands at Marvada submerged in Dharoi Project and they had no choice but to accept the lands wherever offered by the Collector. It was further submitted that the application for grant of permission to sell the lands granted at Vashi is in conformity with order of grant dated 6.12.1974 and agreement executed under Rule 37(4) in Form No. I(i) and therefore all observations by the Collector imputing to the petitioners intention to make profits are unwarranted and unjustified. It was further submitted that the Deputy Secretary (Appeals) has also misconstrued power of attorney and held that land is transferred to petitioner No. 5 without obtaining prior permission and thereby committed breach of condition No. 2 of the grant and confirmed the order of the Deputy Collector and the Collector.

13. It was further submitted the authorities considering the distance between lands at Vashi and Naredi has overlooked the fact that the lands obtained at Vashi were not voluntary act of the petitioners and after cultivating the said lands for more than 17 years, on obtaining possession of lands at Naredi in 1984, as per agreement applied for permission to sell the lands at Vashi, the petitioners did not commit breach of any condition of grant.

14. I have heard learned counsel for the petitioners and I have also heard Ms. Acharya, learned A.G.P. on behalf of the respondents. Learned A.G.P. has tried to support the order of the Government on the basis of the reasoning given by the authorities.

15. In my view the order of the authorities are clearly illegal. In my view giving of land to petitioner No. 5 by power of attorney is not in any way parting with

land in favour of petitioner No. 5. In any way the authorities ought to have considered that petitioner no. 5 is a member of the family and therefore there is no question of parting of the land in favour of the petitioner No. 5.

16. The authorities have also not considered that Section 2(b) of the Tenancy Act which prohibits that land to be cultivated personally particularly in view of Section 2(b)(2) of the Act. In fact the authorities have not looked into the provisions though they have decided against the petitioner on that count.

17. Even though the earlier proceedings were initiated the Deputy Collector after recording evidence by his order dated 2.2.1985 discharged the notice. This order has also not been considered by the Deputy Collector, the Collector, the Revisional Authority and thereby completely ignored the said order and evidence recorded by the Deputy Collector. The authorities have also not considered condition by entry No. 283 dated 6.11.1975 as well as condition dated 17.5.1977 which I have narrated above.

18. In my view the orders of the authorities, namely order of the Deputy Collector dated 26.5.1988, Collector dated 21.8.1990 and the Deputy Secretary (Appeals) dated 10.5.1991 are contrary to and inconsistent with the facts of the case and are illegal liable to be quashed and set aside and they are accordingly quashed and set aside.

19. It is therefore held that the petitioners are still to continue the land in question at Vashi, Tal. Danta, Dist. Banaskantha on payment of Rs. 360 per acre which was granted by the Government on 6.12.1974. The Special Civil Application is allowed accordingly with no order as to costs. Rule made absolute.

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